
Appendix 1. Preservation of Public Records and Established Guidelines for Preservation of Public Records

Public employees have a duty to preserve public records unless specifically authorized by law or rule to destroy particular records. Any doubt should be resolved in favor of retention until legal advice can be obtained.

General guidelines for public officials on whether to toss, delete, or save a record:

- *Decide how best to classify the record.* For example: Is the record an agency's official policy statement on matters of historical significance -- or just a message to return a telephone call? The former should be archived permanently, but the latter has only fleeting importance.
- *Don't be swayed based on the form of the record.* For example, if an agency's official policy statement on matters of historical significance is contained in e-mail, it should be subject to the same treatment and preserved as if it were created as a paper record.
- *Dispose of a record only as authorized.* State law prohibits records from being "mutilated, destroyed, transferred, removed, or otherwise damaged or disposed of . . . except as provided by law or by rule." (Iowa Code sec. 305.13) Compliance assures that archived records are accessible to the public.

Established Guidelines for the Retention and Disposition of Certain Records Types

Activity Reports and Itineraries - Things such as daily or weekly summaries of time spent on individual activities should be retained for 3 years, then destroyed.

Agency operations manuals - Operations manuals should be retained while current. Once no longer current, they can be destroyed.

Correspondence (E-Mails) From Constituents - In dealing with letters and e-mail messages from citizens and others (i.e. when they write to pose questions, voice concerns, express opinions, or lodge complaints), you must be able to determine if their message is confidential - or if it is a public record available to others upon request. Specific laws make some letters confidential. For example, complaints about physicians to the Board of Medical Examiners are confidential by law. If no specific statute applies, however, here are the basic principles of Iowa law that govern letters from the public:

- Many citizen letters are considered open records. In fact, such letters *must* be available for examination and copying by others, if *any* of the following are true: (1) the person making the communication consents to disclosure; or (2) information in the communication can be disclosed without identifying the person who sent it; or, (3) information in the communication discloses facts surrounding a crime or illegal act, unless the disclosure would jeopardize an investigation or pose a danger to others. (Iowa Code section 22.7 (18).)

- *In some cases, citizen letters may be kept confidential.* A public agency in Iowa may have discretion to keep communications from the public confidential, if **all** of the following are true: (1) the communication comes from a person outside of government; and (2) the communication is voluntary and not required by any law, rule or procedure; and (3) the government body could reasonably believe the public would be discouraged from communicating if the communications were available for public examination and copying.

Citizens who write to government bodies should be aware that their letters could be open for examination and copying by others. If confidentiality is important, citizens would be wise to say so in their letters. Government bodies can make better decisions about disclosing letters from the public if citizens communicate clearly about confidentiality. If the correspondence from the public is in the form of a general request or inquiry for routine information or publications provided by your agency, retain the correspondence for 6 months, then destroy. If it is a complaint, it should be kept for 6 months or until it is resolved, whichever is longer.

Correspondence, Personal - Any e-mail not received or created in the course of state business may be deleted immediately, since it is not an official record: these are the "Let's do lunch" (so long as it is not a State-business lunch) or "Can I catch a ride home" type of note.

Correspondence related to the performance of assigned duties - Much of the communication via e-mail has a very limited administrative value. For instance, an e-mail message notifying employees of an upcoming meeting would only have value until the meeting has been attended or the employee receiving the message has marked the date and time in his/her calendar. These type of messages typically help to organize your work day, make or clarify work assignments, or assist you in carrying out your duties. E-mail messages fall into this category as long as they do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt. The informal tone of many of these messages might be compared to a communication that might take place during a telephone conversation or conversation in an office hallway. Examples include:

- Telephone messages.
- Internal Publications: Newsletters, bulletins and announcements for internal current departmental use only.
- Drafts and other limited documents which serve to convey information of temporary importance in lieu of oral communication.
- Meeting notices.
- Internal correspondence (or correspondence with vendors) about technical problems, problem determination and resolution, or work assignments.

You should retain these messages while current, then destroy them.

Departmental Policies and Procedures – Retain in the agency while current; after a policy or procedure is no longer in effect, one copy is to be transferred to State Archives.

Employee Handbooks and Employment Manuals - Retain in the agency while current; after they are outdated or no longer in effect, one copy is to be transferred to State Archives for permanent storage.

Employment applications - Must be retained at least two years from the date the position is filled, under federal law (29 CFR sec. 1602.31) -- and possibly longer for state agencies covered by the State's Records Manual, or in the event of an allegation of discrimination.

Executive Correspondence - Correspondence of the head of an agency or the heads of major divisions of an agency dealing with significant aspects of the administration of their offices. Correspondence includes information concerning agency policies, programs, fiscal and personnel matters. This information qualifies for permanent retention. Retain this information in the agency for 2 years, then transfer to State Archives.

Forms - These may exist in forms other than paper, for example, copies of computer tape or other computer readable medium (1980 Op. Att'y. Gen. 378). Forms should be retained according to the applicable Records Series Retention and Disposition Schedule.

Minutes of open meetings of governmental bodies - Meeting minutes should be retained for five years after the end of the fiscal year in which the minutes were prepared, then transferred to the state archives for permanent storage. (1980 Op. Att'y. Gen. 88)

Minutes of Departmental Staff Meetings - If the minutes and supporting records document internal policy decisions, they qualify for permanent retention. Retain this information in the agency for 2 years, then transfer to State Archives. If they are minutes of work meetings that have no administrative value, they should be retained as long as they have value to the participants or other interested parties, then destroyed.

Miscellaneous - E-mail messages that do not meet the legal definition of a record (i.e. they do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt) may be deleted at any time, unless they become part of some official record as a result of special circumstances such as an audit, court proceeding, or a pending information request.

Non-State Publications - Publications, promotional material from vendors, and similar material that are "publicly available" to anyone are not official records unless specifically incorporated into other official records (i.e. as part of a handout to a board, commission, or council). This includes listserve messages (other than those you post in your official capacity), unsolicited promotional material ("spam"), and files copied or downloaded from Internet sites.

Packets of informational material prepared for use at an open meeting of an advisory council - Such packets should be retained the same as meeting minutes for such bodies. Retained for five years after the end of the fiscal year in which the meeting occurred, then transfer to the state archives for permanent storage. (1982 Op. Att'y. Gen. 215).

Settlement of Lawsuits and Final Agency Actions - Private parties occasionally agree to keep the terms confidential when they settle a lawsuit. If the settlement is confidential, citizens cannot find out from public records what, if anything, was paid to settle the case. A governmental settlement document is a public record open for examination and copying, unless the settlement document is made confidential under a specific provision of law. Several provisions of law address public disclosure of these documents in different contexts:

- *Insurance Claims*: When an insurer settles a claim against a government body or one of its officers, agents or employees, the government body must maintain a written, public summary of the settlement stating the amount of all payments and to whom they were paid. Iowa Code sec. 22.13.
- *State Agency Actions*: All final orders, decisions and opinions must be available for public inspection with identifying details deleted only as authorized by law to prevent an unwarranted invasion of personal privacy or disclosure of trade secrets. Iowa Code sec.17A.3(1)(e).
- *Professional Disciplinary Actions*: A final written decision by a professional licensing board in a disciplinary proceeding against a licensed professional is a public record. Iowa Code sec. 272C.6(4).

Remember that governmental bodies are accountable for litigation settlements, whether in court, or in matters pending before the governmental bodies themselves. Public disclosure is the rule, and confidentiality is the exception. The courts are responsible for keeping certain records of trials and proceedings for forty years. You should check with legal counsel for appropriate retention periods for the documents listed above.

Systems Analyses, Surveys, Studies and Proposals - Documentation conducted to assist an agency in overall planning and programming. Retain for 10 years, then destroy.